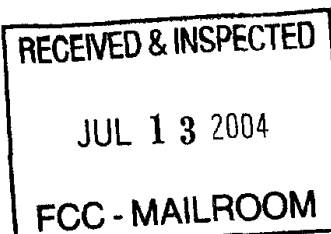




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July 12, 2004 DOCKET FILE COPY ORIGINAL

Office of the Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: Comments of the Public Cable Television Authority ("PCTA"), California Re:  
MB Docket No. 04-207 (the "A La Carte Docket")

Honorable Secretary:

This firm serves as General Counsel to the PCTA and offers these comments on behalf of the PCTA in relation to the A La Carte Docket. The authority to provide these written comments has been provided by the Board of Directors (the "Board") of the PCTA.

The PCTA constitutes a joint powers authority formed pursuant to California law which franchises and regulates cable television within the California cities of Fountain Valley, Huntington Beach, Stanton, and Westminster (the "Member Cities"). The PCTA is a public entity separate and distinct from the Member Cities with a governing body consisting of two representatives of the City Council of each of the Member Cities. PCTA's current franchisee is a wholly-owned subsidiary of Time Warner Cable ("TWC") which has provided cable service, through itself or various predecessor-in-interest entities, since the late 1970's. There are currently 76,291 Basic Service Tier ("BST") Subscribers located within the jurisdictional boundaries of the PCTA. The PCTA, through its Board, is actively involved in numerous facets of cable television regulation including Basic Service Tier rate regulation, public right-of-way protection, customer service standards enforcement, and ongoing franchise compliance.

The PCTA has carefully reviewed the Public Notice in the A La Carte Docket (DA 04-1454, May 25, 2004) (the "Public Notice Relating to Comment Requested on A La Carte and Theme Tier Programming and Pricing Options for Programming Distribution of Satellite Television and Direct Broadcast Satellite Systems") (the "Public Notice"). In general, the PCTA does not possess sufficient information to provide comment in relation to Questions Nos. I, II, III, V, and VI. Ultimately, all of the information necessary to discuss and effectively comment upon these Questions lies in the hands of programmers and cable operators which have historically been loathe to share any information regarding the economics of programming

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Office of the Secretary  
July 12, 2004  
Page 2

carriage with local government. In the context of both rate regulation and franchise fee audits, the PCTA, through its various consultants, has attempted to secure information relating to programming carriage contracts without success. As is often the case in franchise fee audits, the cable operator has chosen to release selective, and obviously self-serving, information regarding programming carriage contracts while at the same time withholding access to other potentially relevant provisions. The continuation of this practice by both the cable industry and programmers, many of which are actually controlled by the cable industry or entities affiliated with the cable industry, will prevent a meaningful discussion of a la carte carriage and pricing. The PCTA wholeheartedly encourages the Federal Communications Commission (the "Commission") to require all relevant parties to provide information to all affected parties, certainly including those governmental entities which speak on behalf of consumers in their jurisdiction, relating to the subject matter of the Commission's inquiries in the Public Notice. It is only against the backdrop of equal access to relevant information that the Commission's inquiries can be addressed with any degree of accuracy, objectivity, and completeness.

#### RESPONSE TO QUESTION NO. IV <sup>1</sup>

The PCTA does not believe that a la carte carriage would have a significant negative impact upon the ability of consumers to receive independent, niche, religious, and ethnic programming. In reality, programming carriage decisions are made today by the cable operator based upon a revenue enhancement model. Within the boundaries of the PCTA, significant minority groups, including, without limitation, Hispanics, Viet Nameese, and other Southeast Asians, have been historically underserved in terms of ethnic programming options. Although their plight might not improve in terms of a la carte carriage, the PCTA does not believe that their lot would be significantly worsened. Under a la carte carriage, the marketplace, as opposed to the cable operator, will now value the niche programming based upon the test of subscriber receptability as opposed to the many other considerations which a cable operator may take into account including, without limitation, tying arrangements with other programming, launch incentives, advertising potential, and other factors which may or may not reflect true consumer interests. Because neither current practices nor a la carte carriage truly incentivizes niche and ethnic programming, this argument should not be utilized, in the opinion of the PCTA, to stifle consumer choice.

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<sup>1</sup> The rapidly expanding penetration of digital programming should advance the cause of niche programming based upon added channel capacity and ease of a la carte menu selection and billing as opposed to the analog model. Out of 76,291 BST Subscribers residing within the PCTA, 51,146 have elected at least one digital package.

## RESPONSE TO QUESTION NO. VII

From a policy viewpoint, the PCTA does not believe that cable and satellite operators should be treated differently in terms of a la carte options. Having said that, the statutory scheme relating to these categories of video providers is significantly different with the Commission both statutorily, and certainly from an historic viewpoint, possessing far greater regulatory latitude in terms of the cable industry.

Ultimately, the PCTA is not in the position to predict the Constitutional treatment of any a la carte regulatory scheme, whether adopted by statute or through administrative regulation. Although both cable operators and programmers undoubtedly possess First Amendment protections, those protections should not be allowed to trump the ability of cable subscribers to receive affordable and diverse programming. Although much has been said regarding the constitutional protections of the various business interests which are stakeholders in this discussion, little has been said to date regarding the rights of subscribers to receive robustly diverse programming within the confines of their economic budgets. As cable rates have risen almost exponentially since the deregulation of the Cable Programming Service Tier in 1999, many consumers within the boundaries of the PCTA can no longer afford connection to the video world. Although one could argue, and many do, that cable consumers are receiving far more services for their increased dollars than would have been true in 1996, significant questions exist as to whether or not the trade-off is viewed favorably by cable subscribers who are now being forced to pay for both the rampant speculation and intensive capital expenditures, many of which were made in order to provide deregulated non-cable service products such as cable modem service, incurred by the cable industry in the late 1990's without any choice as to menu selection. Within the framework of a constitutional analysis, the interests of subscribers must be articulated and aggressively represented.

## CONCLUSION.

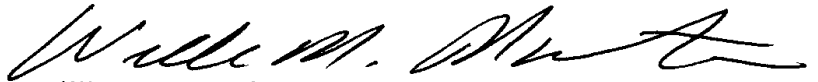
On balance, the PCTA supports a regulatory scheme which provides consumers with enhanced choices and options from those available today. However, the PCTA does not believe that a la carte carriage and pricing is necessarily a panacea to the incessantly rising prices of cable and other video services whether delivered by facilities connected to the land or through the air. Rather, enhanced competition between facilities-based providers of video service has been, and will continue to be, the greatest protection for consumers in this equation. Until we have true competition in the provision of video services, which PCTA does not believe exists to any significant extent at this point in time, stringent regulatory policies will continue to be necessary to protect consumers from market imperfections and, in the worst case scenario, market abuses. As this Commission is well aware, a la carte carriage and pricing was utilized by certain elements of the cable industry, to varying degrees, in an attempt to circumvent Congress' 1992 mandate to reduce cable rates to "reasonable levels." Given this history, the Commission

Office of the Secretary  
July 12, 2004  
Page 4

must be diligent in not allowing a policy which could produce significant consumer benefits to be used as an excuse for future rate hikes. Although a la carte carriage may provide some rate mitigating influence, true competition or some form of re-regulation of the CPST will ultimately provide the greatest degree of consumer protection.

Sincerely,

RUTAN & TUCKER, LLP



William M. Marticorena

WMM:vb

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Executive Director, PCTA  
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